IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13373 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MARUTI INTERIOR PRODUCTS PVT.LTD.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 13373 of 2004

MR PARESH M DAVE for Petitioner No. 1-2

MR JITENDRA MALKAN for Respondent No. 1

..... for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 12/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. Rule. Mr.Malkan, learned Standing Counsel appearing on the advance copy of this petition being served upon him, waives service of notice of rule for respondents.

2. In response to the show cause notice dated 12.9.2003 the petitioner filed reply and the written submissions before the adjudicating authority, who had passed the order in original dated 31.3.2004 (issued on 30.4.2004) whereby he confirmed duty demand of Rs.14,11,387/= (Annexure-A). The said order was received by the petitioner company on 2.6.2004. On receiving the same, within a period of limitation, the petitioner company filed appeal with stay applications before the Commissioner (Appeals) on 26.7.2004 (Annexure-B). The same are pending even today without any further orders passed on it because the officer concerned, who is in-charge of the Commissioner (Appeals), Rajkot has been transferred somewhere in June, 2004 and since then the office is lying vacant as new incumbent has not taken charge of the office of Commissioner (Appeals) at Rajkot.

3. During the pendency and final disposal of the appeal and stay applications of the petitioners, respondent No.4 had issued letter in form of notice dated 27.9.2004 (Annexure-C) calling upon the petitioner company to make the payment of duty confirmed by the Joint Commissioner, Central Excise in his order in original. On receiving the same the petitioner company by way of its reply dated 30.9.2004 filed on 1.10.2004 brought to the notice of both the respondents that their appeals with stay applications are pending before the Commissioner (Appeals), therefore, no recovery proceedings should be initiated against them (Annexure-D).

4. In spite of the aforesaid reply received by the respondent No.4 local Central Excise officers, including fourth respondents were pressurizing the petitioner company to deposit the amount in question in absence of any stay order passed in its favour and threatening them with coercive measures of recovery. Therefore, the petitioners approached this court by way of this petition under Art.226 of the Constitution.

5. In response to the advance of this petition being

served upon the respondents, reply affidavit of Mr. S.B.Gurang, Assistant Commissioner of Central Excise, Division-II, Rajkot is filed wherein it is stated that "it is not correct to say that the petitioners were any time threatened of coercive measures of recovery. On reply by the petitioners in response to letter dated 27.9.2004 of the Range Officer, no further letter was issued or any other measure for recovery were initiated by any Central Excise Officer including Range Officer.

In para 4 of the reply affidavit it is stated that "it is not correct to say that the Respondents have initiated coercive actions for recovery because only after completion of three months period and nothing was heard from the petitioner by the Range Superintendent, the letter dated 27.09.2004 was written by the Supdt. to the petitioner asking for payment of confirmed dues. However, on receipt of the information from the petitioner that the stay application and an appeal is already lodged, no further action was taken in this regard".....(emphasis supplied).

6. From the averments made in paras 3 and 4 of the reply affidavit it is clear that they had not contemplated any further action, including the action of recovery by coercive measures. However, it was submitted by Mr.Dave that if they had not threatened with the coercive measures after receiving the reply of the petitioner, then there was no reason for them to approach this court by way of this petition.

7. Mr.Dave submitted that it is only because of this petition such a reply has come wherein it is stated that no further action was taken against the petitioners after receiving the reply to the notice. However, he submitted that it is not stated in the reply affidavit that they will not take coercive measures against the petitioners in future till the stay applications are decided. To this, Mr.Malkan, learned Standing Counsel for the respondents submitted that the Department cannot wait for an indefinite period and not take any action against the petitioners if the petitioners do not get any stay order from the appellate authority within the reasonable time. There is lot of substance in this submission. However, in the instant case, no fault can be found with the petitioners because since June, 2004 the office of Commissioner (Appeals) at Rajkot is lying vacant. Till some one is posted there and some one takes over the charge there and starts functioning, there is no question of hearing and deciding the stay applications of the petitioners.

8. Under the circumstances, we are of the considered opinion that interest of justice would be served by directing the respondents not to take coercive measures against the petitioners at least for a period of one month from the date of the appointment of any officer in the office of Commissioner (Appeals) at Rajkot. As soon as any appointment is made in the office of the Commissioner (Appeals) at Rajkot, then it will be the duty of the petitioners to immediately approach the concerned officer and request him or her to take up their stay applications and decide the same as early as possible, preferably within one month from the date on which he/she assumes the charge of the office of the Commissioner (Appeals) at Rajkot.

9. With these observations and directions, this petition is disposed of. Rule is made absolute to the aforesaid extent only. No order as to costs.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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